

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAMUHAMMAD KHAN,
Plaintiff,

v.

M. PAYTON, et al.,
Defendants.

Case No. 20-cv-03086 BLF (PR)

**ORDER DENYING MOTION FOR
RECUSAL**

(Docket No. 69)

Plaintiff, a state prisoner, filed a *pro se* civil rights action pursuant to 42 U.S.C. § 1983 against an officer at San Quentin State Prison. On April 11, 2023, the Court rescreened the first amended complaint, dismissed non-cognizable claims, and ordered service of the cognizable claims. Dkt. No. 52. The Court granted Defendants' two extensions of time to file a dispositive motion, with the latest deadline of November 16, 2023. Dkt. Nos. 58, 68.

Plaintiff has filed an ex parte request for a different judge, claiming the Court is prejudiced in failing to address his opposition to Defendants' request for an extension of time. Dkt. No. 69. Plaintiff claims the Court has ignored his pleadings and has given Defendants much leeway to change the schedule repeatedly. *Id.* at 1. Plaintiff requests another district judge because he believes the Court is biased. *Id.* The Court construes this

1 request as a motion for recusal.

2 Motions to recuse a district court judge fall under two statutes, 28 U.S.C. § 144 and
3 28 U.S.C. § 455. The substantive standard for recusal under 28 U.S.C. § 144 and 28 U.S.C.
4 § 455 is the same: Whether a reasonable person with knowledge of all the facts would
5 conclude that the judge's impartiality might reasonably be questioned. *United States v.*
6 *McTiernan*, 695 F.3d 882, 891 (9th Cir. 2012); *Yagman v. Republic Ins.*, 987 F.2d 622,
7 626 (9th Cir. 1993) (citation omitted). Sections 144 and 455 ask whether a reasonable
8 person perceives a significant risk that the judge will resolve the case on a basis other than
9 the merits. *Clemens v. United States Dist. Ct. for the Cent. Dist. of Cal.*, 428 F.3d 1175,
10 1178 (9th Cir. 2005). The reasonable person in this context means a well-informed,
11 thoughtful observer, as opposed to a hypersensitive or unduly suspicious person. *Id.*

12 As a federal judge is presumed to be impartial, a substantial burden is imposed on
13 the party claiming bias or prejudice to show that this is not the case. *See United States v.*
14 *Zagari*, 419 F. Supp. 494, 501 (N.D. Cal. 1976). Plaintiff has failed to overcome this
15 presumption. The decisions by this Court to grant Defendants' reasonable requests for
16 extensions of time to file their summary judgment were not based on a bias against
17 Plaintiff. When the Court granted Defendants' first motion for an extension of time on
18 July 6, 2023, no opposition had been filed. Dkt. No. 58. Plaintiff's opposition was filed
19 on July 14, 2023,¹ after the motion had already been granted. Accordingly, it cannot be
20 said that the Court ignored Plaintiff's pleading, which had not yet been filed, when it
21 granted Defendants' motion.

22 Even if the Court had received Plaintiff's opposition and considered it prior to its
23 ruling, it would not have been sufficient to overcome Defendants' showing of good cause.
24 In opposition, Plaintiff asserts that Defendants failed to support their claim regarding
25 trouble scheduling the deposition with any evidence and that they were not diligent in
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27 ¹ Plaintiff filed a duplicate opposition on August 31, 2023. Dkt. No. 66.

1 seeking the request. Dkt. No. 60 at 3-4. However, the declaration of counsel that
2 accompanied the motion satisfied the requirements to support a motion to change time
3 under the Northern District's Local Rule 6-3; no other evidentiary support was required.
4 *See* Civil L.R. 6-3. Moreover, around the same time that Defendants filed their motion for
5 an extension of time on June 30, 2023, Plaintiff also filed a request on July 6, 2023, to
6 postpone the deposition scheduled for July 11, 2023, stating that he needed his papers and
7 notes which were still in storage. Dkt. No. 57. Accordingly, it cannot be said that an
8 extension of time was unwarranted where Plaintiff's notice also indicated that his
9 deposition had not yet occurred. As for Plaintiff's second argument that Defendants were
10 not diligent, the Court disagrees. The order of service stated that extensions of time "must
11 be filed no later than the deadline sought to be extended." Dkt. No. 52 at 7. Defendants
12 filed a timely motion for an extension of time once it became apparent that they could not
13 meet the deadline. Dkt. No. 56. Defendants' third motion for an extension of time was
14 also timely filed and supported by good cause. Dkt. No. 67. Accordingly, it cannot be
15 said that the Court acted with bias in granting that motion as well. Dkt. No. 68.

16 Nor can it be said that the Court has granted Defendants more leeway than it has
17 granted Plaintiff in this action. On September 9, 2020, the Court dismissed the original
18 complaint with leave to amend. Dkt. No. 12. On January 1, 2021, Plaintiff was granted an
19 extension of time to file an amended complaint even after the time to do so had long since
20 expired. Dkt. No. 16. After the first amended complaint was dismissed with leave to
21 amend, Plaintiff was granted generous extensions of time to file a second amended
22 complaint. Dkt. Nos. 25, 28, 32. On May 18, 2022, Plaintiff was granted yet another
23 opportunity to file a second amended complaint even after the time to do so had expired.
24 Dkt. No. 36. Then, in the interest of justice, the Court construed the second amended
25 complaint that was filed as an "amendment" to the first amended complaint and rescreened
26 the pleading. Dkt. No. 52. Plaintiff's history of missed deadlines and the Court's
27 generous rulings in his favor do not indicate that the Court is biased in favor of
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1 Defendants. Accordingly, Plaintiff's arguments are not sufficient to overcome the
2 presumption that this Court has been fair and impartial in this action.

3 Plaintiff may appeal the decision to the Ninth Circuit, but otherwise has no basis for
4 moving to recuse the Court from this matter. The motion for recusal is **DENIED**. Dkt.
5 No. 69.

6 This order terminates Docket No. 69.

7 **IT IS SO ORDERED.**

8 **Dated:** ___ October 6, 2023 ___


BETH LABSON FREEMAN
United States District Judge

United States District Court
Northern District of California

25 Order Denying Mot. for Recusal
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